City of Lafayette Staff Report

For:	City Council
By:	Christine Sinnette, Senior Planner
Date Written:	March 12, 2009
Meeting Date:	March 23, 2009
Subject:	Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Temple Isaiah of CCC and the City of Lafayette, located at 3800 Mt. Diablo Boulevard, APN 241-010-046.

Introduction

The attached Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry between Temple Isaiah of CCC and the City of Lafayette is a condition of approval for L01-07. The attached agreement meets the requirement for approval.

Fiscal Impact

None.

Recommendation

Accept Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry and authorize the City Clerk to accept and record.

Attachment

1. Stormwater Management Facilities Operations and Maintenance Agreement and Right of Entry

Recording Requested By:
CITY OF LAFAYETTE

Return to: **City of Lafayette**
City Clerk
3675 Mt. Diablo Blvd.
Suite 210
Lafayette, CA 94549

Document Title

CITY OF LAFAYETTE

STORMWATER MANAGEMENT FACILITIES OPERATIONS AND MAINTENANCE AGREEMENT AND RIGHT OF ENTRY

PROJECT: Contra Costa Jewish Day School

OWNERS NAME: The Temple Isaiah of Contra Costa County

ASSESSOR'S PARCEL NUMBER: 241-010-046

STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT
AND RIGHT OF ENTRY

This Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this _____ day of _____, 2009, by and between The Temple Isaiah of Contra Costa County, a California non-profit corporation (hereinafter referred to as "Property Owner") and the City of Lafayette, a municipal corporation ("City").

RECITALS

This Agreement is made and entered into with reference to the following facts:

WHEREAS, the Permanent Stormwater Pollution Prevention Measures (hereinafter referred to as Best Management Practices or "BMP") have been installed in and must be maintained for the development called Temple Isaiah of Contra Costa County, located at 3800 Mt. Diablo Boulevard, Lafayette, Contra Costa County, State of California and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "property" or "real property"); and,

WHEREAS, the Property Owner is the owner of real property more particularly described on the attached as Exhibit A; and,

WHEREAS, the City is the owner of Risa Road and Mt. Diablo Boulevard and its storm drains that are adjacent to the property (collectively "Street"), and

WHEREAS, the City's Storm Water Pollution Prevention Regulations, Chapter 5-4 of the Lafayette Municipal Code ("Ordinance") requires proper operation and maintenance of the BMP constructed on this property; and,

WHEREAS, the development conditions of approval require that BMP, as shown on the approved Stormwater Control Plan be constructed and properly operated and maintained by the Property Owner; and,

WHEREAS, the City has approved the Stormwater Control Operation and Maintenance Plan prepared by dk Consulting on November 24, 2008, as this plan may be subsequently modified from time to time with City's approval; and,

WHEREAS, the Stormwater Control Operation and Maintenance Plan includes an annual inspection checklist for the BMP constructed on this property, and,

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the Ordinance and the approved Stormwater Control Plan and Stormwater Control Operation and Maintenance Plan ("Plans"),

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner will make available copies of the approved Plans at the property, with the facility or property manager or other appropriate maintenance personnel, and must maintain the BMP in good working condition acceptable to the City for the life of the project, and in compliance with the Ordinance and the approved Plans. Upon transfer of the property, the Property Owner shall provide the new owner with the current Plans.

SECTION 2

Inspection by Property Owner: The Property Owner, at its own expense, shall conduct annual inspections by October 1 of each year. The annual inspection report shall include completion of the checklist described in the approved Stormwater Control Operation and Maintenance Plan. A qualified independent inspector who is acceptable to the City must inspect the BMP. The Property Owner must submit the inspection report on these BMP to the City Engineer within 30 days after each inspection. A processing fee established in the City's standard fee schedule shall accompany the annual inspection report.

For the first three years after acceptance of the completed development located on the property, Property Owner's inspection and reporting obligations under this section shall be secured by a cash deposit to the City in the amount of $5,000.00. The cash deposit shall be refunded to Property Owner at the end of those three years if Property Owner has timely complied with its inspection and reporting obligations for each of those years. Each failure to conduct an inspection and submit the report in a timely manner shall result in an extension by an additional three years of the period before Property Owner may be refunded its cash deposit.

SECTION 3

Right of Entry and Facility Inspection by the City: The Property Owner hereby grants permission to the City, its authorized agents and employees, and the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board to enter the property, and to inspect the BMP whenever any of the foregoing entities deems necessary to enforce provisions of the Ordinance. These entities may enter the premises at any reasonable time to inspect the premises and BMP operation, to inspect and copy records related to storm water compliance, and to collect samples and take measurements. Whenever possible, these entities will provide notice prior to entry.

SECTION 4

Failure to Perform Required Facility Repairs or Maintenance by the Property Owner: If the Property Owner or its successors fail to maintain the BMP in good working order and in accordance with the approved Plans and the Ordinance, the City, with prior notice, may enter the property to return

the BMP to good working order. The City is under no obligation to maintain or repair the BMP, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the BMP to good working order, the Property Owner shall reimburse the City for all the costs incurred by the City. The City will provide the Property Owner with an itemized invoice of the City's costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. In addition the City may make the cost of abatement of the nuisance caused by the failure to maintain the BMP a special assessment against the property that may be collected at the same time and in the same manner as ordinary municipal taxes are collected as provided in Government Code section 38773.5. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Indemnity: The Property Owner agrees to defend, indemnify and hold harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City and which are in any way connected with the construction, operation, presence, existence or maintenance of the BMP by the Property Owner, or from any personal injury or property damage that may result from the City or other public entities entering the property under Section 3 or 4. The Property Owner shall maintain liability insurance specifically covering the BMP and City. City shall specify amount of coverage and require proof of insurance to be provided to City on a regular basis as determined by the City.

SECTION 6

Successors and Assigns: The covenants of the Property Owner set forth in numbered Sections 1 through 5 above shall run with the land, and the burdens thereof shall be binding upon each and every part of the property and upon the Property Owner, its successors and assigns in ownership (or any interest therein), for the benefit of Street and each and every part thereof and said covenants shall inure to the benefit of and be enforceable by the City, its successors and assigns in ownership of each and every part of Street.

SECTION 7

Severability: Invalidation of any one of the provisions of this Agreement shall in no way effect any other provisions and all other provisions shall remain in full force and effect.

(Signatures on following page)

Recommended for approval:

City Engineer

City of Lafayette:

Mayor

Attest:

City Clerk

PROPERTY OWNERS:

3/6/09

President, Temple Isaiah PAUL J MEWAKER

3/6/09

Executive Director, Temple Isaiah
MICHAEL LIEPMAN

Attachments: Exhibit A
Acknowledgements

ALL-PURPOSE ACKNOWLEDGMENT FOR CALIFORNIA

STATE OF CALIFORNIA
COUNTY OF Contra Costa Co.

On MARCH 06, 2009 (Date), before me, KAZIE K. AFSARI, Notary Public (Name And Title Of Officer (e.g. "Jane Doe, Notary Public")),

personally appeared Paul Julian MENKER & Michael LIEPMAN (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

KAZIE KHOSHNOUD AFSARI
COMM. #1675279
NOTARY PUBLIC • CALIFORNIA
CONTRA COSTA COUNTY
Comm. Exp. JULY 13, 2010

Place Notary Seal Above

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
- ☒ Corporate Officer

Title(s)

- ☐ Partner(s) ☐ Limited ☐ General
- ☐ Attorney-In-Fact
- ☐ Trustee(s)
- ☐ Guardian/Conservator
- ☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)
Paul Julian MENKER

DESCRIPTION OF ATTACHED DOCUMENT

stormwaters, Landscapeagreement
Title or Type of Document

13
Number Of Pages

MARCH 06, 09
Date Of Document

Michael LIEPMAN
Signer(s) Other Than Named Above

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A
Legal description

The property described as follows:

Real property in the City of Lafayette, County of Contra Costa, State of California, described as follows:

PARCEL ONE:

Portion of the Rancho Acalanes, described as follows:

Beginning on the West line of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated August 11, 1924 and recorded August 14, 1924, in Volume 472 of Deeds, at Page 405, at the extension North 45° 22' East of the North line of the 2.997 acre tract described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records, at Page 5; thence from said point of beginning, South 45° 22' West along said extended line to the northeast corner of said 2.997 acre parcel; thence along the North line of said 2.997 acre parcel (62 OR 5) as follows:

South 45° 22' West, 75.98 feet; southwesterly along the arc of a curve to the left, with a radius of 703 feet, 107.05 feet; South 44° 40' West, 4.44 feet; and westerly along the arc of a curve to the right with a radius of 347.5 feet, to the East line of the 1.992 acre tract of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records, at Page 459; thence North along the East line of said 1.992 acre tract to the northeast corner thereof; thence West along the North line of said 1.992 acre tract 183.57 feet to the northwest corner thereof; thence South along the West line of said 1.992 acre tract to the 2.997 acre tract above referred to (62 OR 5); thence westerly along the North line of said tract, along the arc of a curve to the right, with a radius of 729.5 feet, to the East line of the 9.444 acre tract described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records, at Page 459; thence North along the East line of said tract (48 OR 459) to the South line of the parcel of land described in the Deed from Walter Arnstein, et ux, to J. B. Guisto, dated January 29, 1925, and recorded February 18, 1925, in Volume 478 of Deeds at Page 491; thence East along the South line of said Guisto Tract (478 D 491) 556.39 feet to a point due North of the northwest corner of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated June 4, 1925 and recorded July 23, 1925 in Volume 5 of Official Records, at Page 21; thence South 591.40 feet to the northwest corner of said Burton Tract (5 OR 21); thence South 10° East along the West line of said Burton Tract (5 OR 21) and the West line of the Burton Tract above referred to (472 D 405) 225 feet; thence South 38° 30' East along the West line of said Burton Tract (472 D 405), to the point of beginning.

EXCEPTING FROM PARCEL ONE:

1. That portion thereof conveyed to John K. Waite, et ux, by Deed recorded February 19, 1946 in Book 884, Page 285, Official Records.

2. That portion thereof conveyed to the State of California by Deed recorded July 22, 1955, Book 2577, Page 163, Official Records.

3. That portion thereof conveyed to East Bay Municipal Utility District by Deed recorded December 22, 1964, Book 4768, Page 620, Official Records.

PARCEL TWO:

Portion of the Rancho Acalanes, described as follows:

Beginning at the northwest corner of the 1.992 acre tract described as Parcel Two in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926, and recorded September 13, 1926, in Volume 48 of Official Records at Page 459; thence from said point of beginning, East 183.57 feet; thence South 336.75 feet to a point which bears North 130.15 feet from the southeast corner of said 1.992 acre tract described in Volume 48 of Official Records at Page 459; thence South 79° 37' 29" West, 186.62 feet to a point on the West line of said 1.992 acre tract, which said point bears North 108.20 feet from the southwest corner of said 1.992 acre tract; thence North 370.36 feet to the point of beginning.

PARCEL THREE:

Portion of the Rancho Acalanes, described as follows:

That parcel of land bounded on the North by the South line of the 2.997 acre parcel of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records, at Page 5 on the South by the North line of the Old County Road between Lafayette and Oakland, as said North line existed in 1924, and by the North line of the State Highway between Lafayette and Oakland, on the West by the East line of the 1.992 acre parcel of land described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 23, 1926 and recorded September 13, 1926 in Volume 48 of Official Records, at Page 459.

EXCEPTING FROM PARCEL THREE:

Any portion thereof lying within the parcel of land described in the judgment quieting title recorded April 24, 1989, Book 15021, Page 100, Official Records, and amended by Instrument recorded May 25, 1989, Book 15091, Page 580, Official Records.

PARCEL FOUR:

Portion of the Rancho Acalanes, described as follows:

Beginning on the North line of the Old County Road between Lafayette and Oakland, at the West line of the parcel of land described in the Deed from Walter Arnstein, et ux, to Annie E. Burton, dated August 11, 1924, in Volume 472 of Deeds, at Page 405; thence from said point of beginning, South 45° 55' West along said North line to the most easterly corner of the 2.997 acre parcel of land described in the deed from Walter Arnstein, et ux, to East Bay Municipal Utility District, dated August 30, 1926, and recorded September 13, 1926, in Volume 62 of Official Records at Page 5; thence North 38° 30' West along the northeast line of said 2.997 acre parcel; thence North 45° 22' East to the West line of said Burton Parcel (472 D 405); thence South 38° 30' East along said line to the point of beginning.

PARCEL FIVE:

A portion of that parcel of land described in the Final Order of Condemnation, recorded December 7, 1955, in Volume 2666, Page 339, Official Records of Contra Costa County, said

portion being more particularly described as follows:

Commencing at the easterly terminus of that course described as "N. 85° 04' 55" E., 118.48 feet" in Parcel 1 of Deed No. 5132 to State of California, recorded July 22, 1955, in Volume 2577, Page 163, Official Records of Contra Costa County; thence along the easterly prolongation of said course, North 85° 04' 36" East 98.90 feet; thence South 81° 44' 19" East, 117.89 feet to the southerly line of said parcel (2666 OR 339); thence along last said line and along the westerly line of said parcel (2666 OR 339) North 89° 17' 54" West, 215.27 feet and North 0° 37' 45" East, 5.82 feet to the point of commencement.

The bearings and distances used in the above description for Parcel Six are on the California Coordinate System, Zone 3. Multiply the above distances by 1.0000880 to obtain ground level distances.

PARCEL SIX:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, more particularly described as follows:

Commencing at the northern line of the 2.977 acre parcel of land, described in the Deed from Walter Arnstein, et ux, to East Bay Municipal Utility District recorded September 13, 1926, in Volume 62 of Official Records, at Page 5, at the West line of the parcel of land described as Parcel One in the Deed from John Costello, Trustee, to Contra Costa Jewish Community Center, recorded March 8, 1954 in Volume 2280 of Official Records, at Page 468;

thence, from said point of commencement, along said western line, North 00° 15' 16" East 66.61 feet to the point of beginning for this description;

thence, from said point of beginning, leaving said western line, North 60° 19' 33" West 89.14 feet;

thence, North 09° 49' 54" West 29.93 feet;

thence, North 06° 37' 20" East 48.70 feet;

thence, North 29° 00' 31" West 142.28 feet;

thence, North 06° 42' 44" West 58.22 feet;

thence, North 42° 52' 12" East 114.47 feet;

thence, North 19° 58' 45" West 106.46 feet;

thence, North 15° 29' 45" East 24.09 feet;

thence, North 39° 17' 12" East 97.35 feet;

thence, South 79° 36' 19" East 46.49 feet to a point on said western line of said Parcel One (2280 OR 468);

thence, along said western line, South 00° 15' 16" West 578.38 feet to said point of beginning.

PARCEL SEVEN:

"An easement for the construction, reconstruction, maintenance, removal and use of twenty (20) foot wide roadway and a 12 inch diameter storm drain" as conveyed to Temple Isaiah of Contra Costa County by Instrument recorded January 15, 1999, Series No. 99-12455, Official Records, described as follows:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 14.14 feet to the point of beginning for this description.;

thence, from said point of beginning, North 60° 19' 33" West 20.15 feet;

thence, along the arc of a non-tangent 105.23 foot radius curve to the right, from which the center of said curve bears North 67° 57' 41" West, through a central angle of 11° 19' 47", an arc distance of 20.81 feet;

thence, South 33° 22' 15" West 113.93 feet;

thence, along the arc of a tangent 60.00 foot radius curve to the left, through a central angle of 83° 05' 22", an arc distance of 87.01 feet;

thence, South 49° 43' 07" East 74.92 feet;

thence, along the arc of a tangent 9.00 foot radius curve to the right, through a central angle of 21° 40' 30", an arc distance of 3.40 feet to a point on the northern line of Mt. Diablo Boulevard, as it now exists;

thence, along said northern line, along the arc of a non-tangent 1,950.00 foot radius curve to the left, from which the center of said curve bears North 06° 50' 39" East, through a central angle of 01' 33' 19", an arc distance of 52.94 feet;

thence, leaving said northern line, North 37° 45' 47" West 35.89 feet;

thence, North 85° 19' 36" West 21.58 feet;

thence, North 49° 43' 07" West 69.85 feet;

thence, along the arc of a tangent 40.00 foot radius curve to the right, through a central angle of 83° 05' 22", an arc distance of 58.01 feet;

thence, North 33° 22' 15" East 109.90 feet;

thence, along the arc of a tangent 125.23 foot radius curve to the left, through a central angle of 10° 06' 16", an arc distance of 22.09 feet to said point of beginning.

PARCEL EIGHT:

"An easement for the construction, reconstruction, maintenance, removal and use of a 12 inch diameter storm drain" as conveyed to Temple Isaiah of Contra Costa County by Instrument recorded January 15, 1999, Series No. 99-12456, Official Records, described as follows:

PARCEL EIGHT-A:

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 14.14 feet;

thence, along the arc of a non-tangent 125.23 foot radius curve to the right, from which the center of said curve bears North 66° 44' 10" West, through a central angle of 10° 06' 16", an arc distance of 22.09 feet;

thence, South 33° 22' 15" West 20.03 feet to the point of beginning for this description;

thence, from said point of beginning, South 33° 22' 15" West 89.87 feet;

thence, along the arc of a tangent 40.00 foot radius curve to the left, through a central angle of 25° 27' 31", an arc distance of 17.77 feet;

thence, North 48° 55' 42" East 35.85 feet;

thence, North 33° 22' 15" East 32.21 feet;

thence, North 14° 51' 31" East 42.52 feet to said point of beginning.

PARCEL EIGHT-B

A portion of that certain parcel of land granted to East Bay Municipal Utility District, by Deed recorded July 23, 1925, in Book 48 of Official Records, at Page 459, in the Office of the County Recorder of Contra Costa County, and other properties owned by East Bay Municipal Utility District, more particularly described as follows:

Commencing at a point on the eastern line of said parcel of land, said point being the southwestern corner of that certain parcel of land described in the Deed recorded December 22, 1964, in Book 4768 of Official Records, at Page 620, in said Office of the County Recorder of Contra Costa County;

thence, from said point of commencement, along said eastern line, North 00° 15' 16" East 66.61 feet;

thence, leaving said eastern line, North 60° 19' 33" West 34.29 feet;

thence, along the arc of a non-tangent 105.23 foot radius curve to the right, from which the center of said curve bears North 67° 57' 41" West, through a central angle of 11° 19' 47", an arc distance of 20.81 feet;

thence, South 33° 22' 15" West 113.93 feet;

thence, along the arc of a tangent 60.00 foot radius curve to the left, through a central angle of 29° 39' 53", an arc distance of 31.06 feet to the point of beginning for this description.;

thence, from said point of beginning, continuing along said 60.00 foot radius curve to the left, from which the center of said curve bears North 37° 28' 49" East, through a central angle of 13° 22' 36", an arc distance of 14.01 feet;

thence, South 48° 55' 42" West 97.60 feet to a point on the northern line of Mount Diablo Boulevard as it exists today;

thence, along said northern line, along the arc of a non-tangent 1,950.00 foot radius curve to the right from which the center of said curve bears North 10° 41' 06" East, through a central angle of 00° 24' 37", an arc distance of 13.97 feet;

thence, leaving said northern line, North 48° 55' 42" East 114.82 feet to said point of beginning.

APN: 241-010-046 and 241-010-002